

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 124

Introduced by Senator De León

January 26, 2011

An act to amend Sections 189, 12022.2, 16650, 16660, 30315, 30320, and 30325 of the Penal Code, relating to ammunition.

LEGISLATIVE COUNSEL'S DIGEST

SB 124, as amended, De León. Ammunition.

Existing law, as amended by Proposition 115, adopted by the voters at the November 7, 1990, statewide general election provides that all murder which is perpetrated, among other means, by knowing use of ammunition designed primarily to penetrate metal or armor, is murder in the first degree. Proposition 115 may be amended by a bill passed by majority vote of the Legislature if that bill becomes operative upon approval of the voters.

This bill would delete the word “primarily” and recast that provision to provide that all murder which is perpetuated by knowing use of ammunition designed to penetrate metal or armor is murder in the first degree. The bill would also provide that this provision is operative *upon* approval by the voters and directs the Secretary of State to place this provision on the ballot of the next statewide election.

Existing law provides that any person who, while armed with a firearm in the commission or attempted commission of any felony, has in his or her immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of 3, 4, or 10 years.

This bill would delete the word “primarily” and recast the above crime to be based on the immediate possession of ammunition for the firearm designed to penetrate metal or armor. The bill would further omit reference to ammunition primarily designed for use in a rifle and instead define “handgun ammunition designed to penetrate metal or armor” to mean ammunition, except a shotgun shell, capable of penetrating a body vest or body shield when discharged from a handgun.

Existing law defines “handgun ammunition” to mean ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles. Other provisions of existing law regulate the sale, transfer, delivery, and possession of handgun ammunition, and violations of certain of those provisions are crimes.

This bill would delete the phrase “principally” from that definition, and recast the definition of handgun ammunition to mean ammunition ~~for use capable of being used~~ in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles.

Existing law provides that “handgun ammunition designed primarily to penetrate metal or armor” means any ammunition, except a shotgun shell or ammunition primarily designed for use in a rifle, that is designed primarily to penetrate a body vest or body shield, and has either of 2 characteristics, one of which is that it is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, ammunition commonly known as “KTW ammunition,” to breach or penetrate a body vest or body shield when fired from a pistol, revolver, or other firearm capable of being concealed upon the person.

This bill would delete the word “primarily” and recast the above phrase to read “handgun ammunition designed to penetrate metal or ~~armor.~~” *armor” to mean any ammunition, except a shotgun shell, that is designed to penetrate a body vest or body shield when discharged from a handgun and which has either of the 2 characteristics described above.*

Existing law provides that any person, firm, or corporation who, within this state, knowingly possesses any handgun ammunition designed primarily to penetrate metal or armor is guilty of a public offense, with specified penalties.

This bill would delete the word “primarily” from those provisions and recast those provisions to be based on knowingly possessing handgun ammunition designed to penetrate metal or armor.

Existing law provides that any person, firm, or corporation who, within this state, manufactures, imports, sells, offers to sell, or knowingly transports any handgun ammunition designed primarily to penetrate metal or armor is guilty of a felony and upon conviction thereof shall be punished by imprisonment in state prison, or by a fine not to exceed \$5,000, or by both that fine and imprisonment.

This bill would delete the word “primarily” from those provisions and recast those provisions to be based on handgun ammunition designed to penetrate metal or armor.

Existing law authorizes the possession of handgun ammunition designed primarily to penetrate metal or armor by a person who found the ammunition, if that person is not otherwise prohibited from possessing firearms or ammunition, and the person is transporting the ammunition to law enforcement for disposition.

This bill would delete the word “primarily” from those provisions and recast those provisions to read handgun ammunition designed to penetrate metal or armor.

By expanding the definition of “handgun ammunition” and the definition of “handgun ammunition designed to penetrate metal or armor,” this bill would expand the scope of certain crimes relating to the sale, transfer, delivery, and possession of handgun ammunition, and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 189 of the Penal Code, as amended by
2 Section 51 of Chapter 178 of the Statutes of 2010, is amended to
3 read:

4 189. (a) All murder which is perpetrated by means of a
5 destructive device or explosive, a weapon of mass destruction,

1 knowing use of ammunition designed to penetrate metal or armor,
2 poison, lying in wait, torture, or by any other kind of willful,
3 deliberate, and premeditated killing, or which is committed in the
4 perpetration of, or attempt to perpetrate, arson, rape, carjacking,
5 robbery, burglary, mayhem, kidnapping, train wrecking, or any
6 act punishable under Section 206, 286, 288, 288a, or 289, or any
7 murder which is perpetrated by means of discharging a firearm
8 from a motor vehicle, intentionally at another person outside of
9 the vehicle with the intent to inflict death, is murder of the first
10 degree. All other kinds of murders are of the second degree.

11 (b) As used in this section, “destructive device” means any
12 destructive device as defined in Section 16460, and “explosive”
13 means any explosive as defined in Section 12000 of the Health
14 and Safety Code.

15 (c) As used in this section, “weapon of mass destruction” means
16 any item defined in Section 11417.

17 (d) To prove the killing was “deliberate and premeditated,” it
18 shall not be necessary to prove the defendant maturely and
19 meaningfully reflected upon the gravity of his or her act.

20 SEC. 2. Section 12022.2 of the Penal Code, as amended by
21 Section 14 of Chapter 256 of the Statutes of 2010, is amended to
22 read:

23 12022.2. (a) Any person who, while armed with a firearm in
24 the commission or attempted commission of any felony, has in his
25 or her immediate possession ammunition for the firearm designed
26 to penetrate metal or armor, shall upon conviction of that felony
27 or attempted felony, in addition and consecutive to the punishment
28 prescribed for the felony or attempted felony, be punished by an
29 additional term of 3, 4, or 10 years. The court shall order the middle
30 term unless there are circumstances in aggravation or mitigation.
31 The court shall state the reasons for its enhancement choice on the
32 record at the time of the sentence.

33 (b) Any person who wears a body vest in the commission or
34 attempted commission of a violent offense, as defined in
35 subdivision (b) of Section 12021.1, shall, upon conviction of that
36 felony or attempted felony, in addition and consecutive to the
37 punishment prescribed for the felony or attempted felony of which
38 he or she has been convicted, be punished by an additional term
39 of one, two, or five years. The court shall order the middle term
40 unless there are circumstances in aggravation or mitigation. The

1 court shall state the reasons for its enhancement choice on the
2 record at the time of the sentence.

3 (c) As used in this section, “body vest” means any
4 bullet-resistant material intended to provide ballistic and trauma
5 protection for the wearer.

6 (d) This section shall become operative on January 1, 2012.

7 SEC. 3. Section 16650 of the Penal Code is amended to read:

8 16650. (a) As used in this part, “handgun ammunition” means
9 ammunition ~~for use~~ *capable of being used* in pistols, revolvers,
10 and other firearms capable of being concealed upon the person,
11 notwithstanding that the ammunition may also be used in some
12 rifles.

13 (b) As used in Section 30312 and in Article 3 (commencing
14 with Section 30345) of Chapter 1 of Division 10 of Title 4,
15 “handgun ammunition” does not include either of the following:

16 (1) Ammunition designed and intended to be used in an antique
17 firearm.

18 (2) Blanks.

19 SEC. 4. Section 16660 of the Penal Code is amended to read:

20 16660. As used in this part, “handgun ammunition designed
21 to penetrate metal or armor” means any ammunition, except a
22 shotgun shell, that is ~~capable of penetrating~~ *designed to penetrate*
23 a body vest or body shield when discharged from a handgun, and
24 has either of the following characteristics:

25 (a) Has projectile or projectile core constructed entirely,
26 excluding the presence of traces of other substances, from one or
27 a combination of tungsten alloys, steel, iron, brass, beryllium
28 copper, or depleted uranium, or any equivalent material of similar
29 density or hardness.

30 (b) Is manufactured or designed, by virtue of its shape,
31 cross-sectional density, or any coating applied thereto, including,
32 but not limited to, ammunition commonly known as “KTW
33 ammunition,” to breach or penetrate a body vest or body shield
34 when fired from a pistol, revolver, or other firearm capable of
35 being concealed upon the person.

36 SEC. 5. Section 30315 of the Penal Code is amended to read:

37 30315. Any person, firm, or corporation who, within this state
38 knowingly possesses any handgun ammunition designed to
39 penetrate metal or armor is guilty of a public offense and upon
40 conviction thereof shall be punished by imprisonment in the state

1 prison, or in the county jail for a term not to exceed one year, or
2 by a fine not to exceed five thousand dollars (\$5,000), or by both
3 that fine and imprisonment.

4 SEC. 6. Section 30320 of the Penal Code is amended to read:

5 30320. Any person, firm, or corporation who, within this state,
6 manufactures, imports, sells, offers to sell, or knowingly transports
7 any handgun ammunition designed to penetrate metal or armor is
8 guilty of a felony and upon conviction thereof shall be punished
9 by imprisonment in state prison, or by a fine not to exceed five
10 thousand dollars (\$5,000), or by both that fine and imprisonment.

11 SEC. 7. Section 30325 of the Penal Code is amended to read:

12 30325. Nothing in this article shall apply to or affect the
13 possession of handgun ammunition designed to penetrate metal
14 or armor by a person who found the ammunition, if that person is
15 not prohibited from possessing firearms or ammunition pursuant
16 to subdivision (a) of Section 30305, Chapter 2 (commencing with
17 Section 29800) or Chapter 3 (commencing with Section 29900)
18 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
19 and Institutions Code, and the person is transporting the
20 ammunition to a law enforcement agency for disposition according
21 to law.

22 SEC. 8. Section 1 of this act shall only become operative if
23 submitted to and adopted by the electors. The Secretary of State
24 shall place Section 1 of this act on the ballot of the next statewide
25 election.

26 SEC. 9. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.